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D.S.E. Concrete Forms, Inc. and Carpenters District Council of Houston and Vicinity, Local 551, AFL-CIO. Case 16-CA-14035

November 30, 1995

SUPPLEMENTAL DECISION AND ORDER

**BY CHAIRMAN GOULD AND MEMBERS BROWNING
AND COHEN**

On July 25, 1991, the National Labor Relations Board issued a Decision and Order,¹ *inter alia*, ordering D.S.E. Concrete Forms, Inc. to make whole all individuals who were unlawfully refused employment, for loss of earnings and benefits they suffered resulting from the Respondent's discrimination against them in violation of Section 8(a)(3) and (1) of the National Labor Relations Act. On April 28, 1994, the United States Court of Appeals for the Fifth Circuit enforced in full the Board's Order.

A controversy having arisen over the amount of backpay due, on August 23, 1995, the Regional Director for Region 16 issued a compliance specification and notice of hearing alleging the amount due under the Board's Order, and notifying the Respondent that it should file a timely answer complying with the Board's Rules and Regulations. Although properly served with a copy of the compliance specification, the Respondent failed to file an answer.

By letter dated October 20, 1995, the counsel for the General Counsel advised the Respondent that no answer to the compliance specification had been received and that unless an appropriate answer was filed by close of business Monday, October 30, 1995, a Motion for Summary Judgment would be filed. The Respondent filed no answer.

On November 6, 1995, the General Counsel filed with the Board a Motion to Transfer Case to the Board and for Summary Judgment, with exhibits attached. On November 8, 1995, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent again filed no response. The allegations in the motion and in the compliance specification are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on the Motion for Summary Judgment

Section 102.56(a) of the Board's Rules and Regulations provides that the Respondent shall file an answer within 21 days from service of a compliance specification. Section 102.56(c) of the Board's Rules and Regulations states:

If the respondent fails to file any answer to the specification within the time prescribed by this section, the Board may, either with or without taking evidence in support of the allegations of the specification and without further notice to the respondent, find the specification to be true and enter such order as may be appropriate.

According to the uncontroverted allegations of the Motion for Summary Judgment, the Respondent, despite having been advised of the filing requirements, has failed to file an answer to the compliance specification. In the absence of good cause for the Respondent's failure to file an answer, we deem the allegations in the compliance specification to be admitted as true, and grant the General Counsel's Motion for Summary Judgment. Accordingly, we conclude that the net backpay due the discriminatees is as stated in the compliance specification and we will order payment by the Respondent of the amounts to the discriminatees, plus interest accrued on the amounts to the date of payment.

ORDER

The National Labor Relations Board orders that the Respondent, D.S.E. Concrete Forms, Inc., Carrollton, Texas, its officers, agents, successors, and assigns, shall make whole the individuals named below, by paying them the amounts following their names, with interest to be computed in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), minus tax withholdings required by Federal and state laws:

| | |
|-------------------|----------|
| Atwood, Robert | \$12,894 |
| Burt, Norman | 772 |
| Drake, David | 17,118 |
| Gardner, Gary | 898 |
| Hammontree, C. L. | 494 |
| Hinojosa, Oscar | 1,269 |
| Hooper, Donnie | 1,109 |
| James, Maria | 3,871 |
| Laird, Rocky | 1,294 |
| Livesay, Linda | 592 |
| Merritt, Ona | 8,390 |
| Parker, George | 178 |
| Rainwater, Calvin | 5,321 |
| Reed, Joe, Sr. | 9,694 |
| Roach, Earl | 283 |

¹ 303 NLRB 890.

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| Sample, Derrell | 4,578 |
| Sirizzotti, Gino | 2,727 |
| Wagner, Jay | 42 |
| TOTAL: | \$71,524 |

Dated, Washington, D.C. November 30, 1995

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| William B. Gould IV, | Chairman |
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| Margaret A. Browning, | Member |
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| Charles I. Cohen, | Member |
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